

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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LARRY KREBS,

Plaintiff,

v.

9:08-CV-255

ELLIOT SPITZER, et al.,

Defendants.

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APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

LARRY KREBS, *pro se*

NORMAN A. MORDUE, CHIEF JUDGE

ORDER

The above matter comes to me following a Report-Recommendation by Magistrate Judge David E. Peebles, duly filed on the 14<sup>th</sup> day of April 2008. Following ten days from the service thereof, the Clerk has sent me the file, including any and all objections filed by the parties herein.

After careful review of all of the papers herein, including the Magistrate Judge's Report-Recommendation, and no objections submitted thereto, it is

ORDERED, that:

1. The Report-Recommendation is hereby adopted in its entirety.
2. The plaintiff's claims pursuant to state law, the Eighth Amendment, and the *ex post facto* clause are dismissed for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(B).

3. The plaintiff is afforded the opportunity to choose to proceed with his remaining due process claims under *either* section 1983 or section 2254 as directed in the Report-Recommendation.

3. The Clerk of the Court shall serve a copy of this Order upon all parties and the Magistrate Judge assigned to this case.

IT IS SO ORDERED.

Dated: May 7, 2008  
Syracuse, New York

  
Norman A. Mordue  
Chief United States District Court Judge